

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ENCOMPASS INSURANCE,  
Plaintiff-Appellee,

UNPUBLISHED  
January 24, 2003

v

DOMINIC RIGGIO,  
Defendant-Appellant,

No. 235574  
Oakland Circuit Court  
LC No. 00-028127-CK

and

MARC SABINI, ALBERT J. SABINI, and  
CHERYL SABINI,

Defendants.

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Before: Cooper, P.J. and Bandstra and Talbot, JJ.

MEMORANDUM.

Defendant Dominic Riggio appeals as of right the order granting plaintiff's motion for summary disposition in this declaratory judgment action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant Riggio was an insured person under a homeowner's policy issued by plaintiff. The Sabinis filed a complaint against Riggio for assault and battery, negligence, and loss of consortium after Marc Sabini was injured in an incident involving Riggio. Riggio asserted that he did not intend to injure Sabini, and his only act was restraining Sabini from entering a fight with Riggio's companions. Plaintiff filed this action seeking a declaration that it was not required to provide a defense because the act fell within the intentional acts exclusion of the policy.

Clear and specific policy exclusions must be enforced to avoid holding an insurance company liable for a risk it did not assume. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 567; 489 NW2d 431 (1992). When an insured's intentional acts create a direct risk of harm, there can be no liability coverage for any resulting damage or injury, despite the lack of an actual intent to damage or injure. *Frankenmuth Mutual Ins Co v Masters*, 460 Mich 105, 116; 595 NW2d 832 (1999).

An intentional acts exclusion requires a subjective inquiry into the intent or expectation of the insured. *Auto-Owners Ins Co v Harrington*, 455 Mich 377, 383; 565 NW2d 839 (1997). Coverage is precluded if the insured's claim that he did not intend or expect the injury flies in the face of reason, common sense and experience. *Id.*, 384. The exclusion applies even if the intended act is taken in self defense. *Id.*, 385. There is no duty to defend where a complaint attempts to trigger coverage by characterizing intentional tortious activity as negligence. *Tobin v Aetna Casualty & Surety Co*, 174 Mich App 516, 518; 436 NW2d 402 (1988).

Defendant Riggio engaged in an intentional act when he physically restrained Sabini from entering the altercation. Although defendant did not intend to cause the injury, a person who takes such an action should reasonably expect that the act could have consequences subjecting him to a direct risk of harm. Because an intentional action subjected defendant to a risk of harm, there is no coverage for any resulting damage. *Frankenmuth Mutual, supra*.

Affirmed.

/s/ Jessica R. Cooper  
/s/ Richard A. Bandstra  
/s/ Michael J. Talbot